

EXHIBIT H

PART 3

1 separating themselves from the individual code
2 committees that write these rules because code
3 committees in the last decade or so have been
4 getting sued and ANSI wants to put themselves an
5 arm's length away from the code committees if they
6 should write something that gets them involved in a
7 lawsuit. So ANSI is very careful about stating
8 that they do not approve or endorse the standards.

9 Q. They publish standards?

10 A. They publish standards, exactly.

11 Q. So an ANSI standard is merely a -- a
12 standard published by ANSI?

13 A. Yes.

14 Q. And in order to be published by ANSI, you
15 need to only qualify by meeting its procedural
16 requirements; am I correct?

17 MR. ROBINSON: Let me object to the form of
18 that question.

19 BY MR. HARTMAN:

20 Q. Well, ANSI has procedural requirements
21 that if you meet, they will publish your standard?

22 A. You certainly have to meet ANSI's
23 procedural requirements. There is a lot more
24 requirements beyond procedures that have to be met

1 as well such as the makeup of each individual
2 committee.

3 Q. But that's a procedure and if you meet the
4 makeup -- if you meet the procedure that they
5 require for the group, the makeup of the group, and
6 if you meet the procedure as it relates to
7 geographic locale, if you meet the consensus
8 procedure, if you meet those procedures and you
9 have a standard that gets through those procedures,
10 then ANSI will publish it, correct?

11 A. Yes.

12 MR. ROBINSON: Object to the form of the
13 question.

14 BY MR. HARTMAN:

15 Q. So what they look at is the makeup of the
16 group, the geographic diversity and the consensus
17 of the group?

18 MR. ROBINSON: I will object to the form of the
19 question.

20 THE WITNESS: Certainly those are among the
21 items that ANSI oversees.

22 BY MR. HARTMAN:

23 Q. Are there any other items that I am not
24 aware of?

1 A. I am sure there are dozens and dozen more.
2 Just based on my own involvement with the ladder
3 code committee and the committee having been
4 audited a couple of times by ANSI over the last ten
5 years, the procedures, manual gets bigger and
6 bigger every year.

7 Q. But we are talking about basically it is
8 those type of procedures that one, a group has to
9 meet and then ANSI will publish a standard?

10 A. Yes.

11 Q. ANSI does not have standards of its own?

12 A. That's correct. As a matter of fact, in
13 the last couple of years ANSI doesn't even want the
14 code committees to call themselves an ANSI
15 committee anymore. They have changed the language
16 now to accredited standards committee. That's what
17 we -- the language we have to use now just to
18 further illustrate their desire to stay an arm's
19 length away from the individual committees.

20 Q. If I am not mistaken, correct me if I am
21 wrong, but it emanates from a lawsuit out in
22 California because ANSI was sued because of a
23 standard; am I correct?

24 A. I think there have been more than one

1 instance where a standard committee gets sued.

2 Whether ANSI is making these changes because they
3 were the named defendant or they know of someone
4 else who was the named defendant, I am not aware.

5 Q. ANSI doesn't -- has made changes because
6 it doesn't want to be responsible for the standards
7 it publishes; am I correct?

8 A. Yeah.

9 Q. ANSI doesn't want to have legal liability
10 as it relates to bad standards that may get passed?

11 A. Yes, I mean the one I am familiar with is
12 this Pool and Spa Institute having been sued.

13 Q. And ANSI approved of a standard that was
14 later found not to be a safe standard and they
15 found themselves as defendants in a lawsuit?

16 A. I think that's generally what I have
17 heard.

18 Q. We are just clarifying a lot of this
19 because there is a lot going on. I appreciate your
20 help.

21 MR. ROBINSON: Whenever you get a chance,
22 I would like to take a break.

23 MR. HARTMAN: Why don't we do that now because
24 I have needed one for about ten minutes?

1 THE VIDEOGRAPHER: Off the record at 10:00 a.m.

2 (A short break was taken.)

3 THE VIDEOGRAPHER: This is the beginning of

4 Tape No. 2. Back on the record at 10:13 a.m.

5 BY MR. HARTMAN:

6 Q. Now, I asked you -- we started and got off
7 the track a little bit with regard to ANSI. But
8 with regard to the 1973 standard, would you read
9 the section as it relates to foot controls as
10 opposed to foot pedals? And I am asking you to
11 read the standard.

12 A. Yes.

13 Okay. Foot control, actuation prevention
14 is Section 4.2.4.2.4 of the standard and it reads,
15 the foot control shall be protected so as to
16 inhibit accidental actuation by falling or moving
17 objects or by someone stepping on it. Means shall
18 be provided for manually locking the foot control
19 to inhibit such accidental actuation.

20 Q. Now, am I correct that with regard to foot
21 controls, it talks about inhibit accidental
22 actuation and with regard to a foot pedal it talks
23 about prevent accidental activation?

24 A. Yes.

1 Q. There is a difference, would you agree?

2 A. Yes.

3 Q. What is your understanding of -- as to the
4 difference as it relates to the ANSI standard on
5 foot pedal as opposed to foot control?

6 A. With regard to the foot pedal, accidental
7 actuation can be prevented because the older style
8 mechanical foot pedal could physically be removed
9 from the machine or there would be a built-in latch
10 or otherwise that physically prevented the downward
11 depression of the pedals.

12 With the foot control it is asking that
13 accidental actuation be inhibited. I think the
14 committee recognizes that you cannot prevent
15 actuation of the control when the normal, the
16 normal way of activating the control was also the
17 way one would accidentally activate the controls.
18 It can't be prevented but features can be added to
19 try and inhibit or to decrease the likelihood of
20 the accidental actuation.

21 Q. So when you have a foot pedal in the
22 normal use of the machine with a foot pedal, there
23 are means by which you could prevent the operator
24 from accidentally activating the foot pedal?

1 A. Yes, as I said, it amounts to the physical
2 removal of the pedal from the machine when you
3 are -- when you are not operating.

4 Q. Well, how about during the operation of
5 the foot -- of the press brake with the foot pedal,
6 can you prevent accidental activation of the foot
7 pedal under those circumstances?

8 A. No, you can't.

9 Q. You cannot?

10 A. No, you can't.

11 Q. Now in 1973 do you know what mechanisms
12 were available by the foot control manufacturers
13 that would -- that could be used to prevent or
14 inhibit inadvertent activation of the pedal?

15 MR. ROBINSON: I will object to the form of the
16 question. You have included prevent and inhibit,
17 which is contrary to I think the testimony that was
18 just given.

19 MR. HARTMAN: I am sorry.

20 BY MR. HARTMAN:

21 Q. Okay. In 1973 do you know what foot
22 controls were available that would inhibit
23 accidental activation of the foot control?

24 A. Yes, I think we have already touched on

1 every one of these features, the top guard, the
2 side guards. I think Linemaster alone has the toe
3 latch, and eventually all of the major foot switch
4 manufacturers came out with some form of a front
5 gate.

6 Q. And the front gate was available in 1973
7 as well?

8 MR. ROBINSON: I am going to object -- is that
9 a question or is that just a statement?

10 BY MR. HARTMAN:

11 Q. Do you agree with that statement?

12 A. It was certainly available with some
13 manufacturers. I don't know the specific date that
14 all of the different manufacturers came out with
15 their version of front gate is unknown to me.

16 Q. But in 1973 the front gate was available
17 on foot controls by some manufacturers?

18 MR. ROBINSON: Object to the form. I will
19 object to the form of that question.

20 THE WITNESS: Yes.

21 BY MR. HARTMAN:

22 Q. And in 1977, 1978, the front gate was
23 available on a foot control manufactured by
24 Linemaster; am I correct?

1 A. Yes.

2 Q. And a foot control with a front gate would
3 be approved by ANSI, that ANSI standard that you
4 just read?

5 MR. ROBINSON: I will object. This has been
6 asked and answered. He said they don't approve for
7 certain things. All of this has been asked and
8 answered. You are now trying to get what you
9 couldn't get before from his answers into a quick,
10 well, let me just say it again, maybe he will say
11 yes. It is inappropriate.

12 MR. HARTMAN: I am not trying to do that.

13 MR. ROBINSON: That's the result that gets
14 reached if there is an answer that's inconsistent
15 with what he has already answered on. So let's
16 please ask some new questions.

17 MR. HARTMAN: Paul, I will ask whatever
18 questions I feel like asking. And if you have a
19 problem with my question -- every time you have
20 asked me to rephrase something, if the witness
21 hasn't understood it, I am more than willing to do
22 it. This is not about the sharp practice of law.
23 This is trying to find out --

24 MR. ROBINSON: Well, you and I disagree on the

1 manner in which some questions are asked. I am
2 raising a very valid objection. These questions
3 have been asked and answered, many of them multiple
4 times. And all I am asking, for purposes of the
5 Court really, because I know that you are going to
6 ask whatever you want, is that we begin to address
7 some new areas.

8 MR. HARTMAN: Okay.

9 BY MR. HARTMAN:

10 Q. Is there a difference between something
11 that's acceptable by ANSI and something that's
12 ANSI-approved, that would be approved by ANSI?

13 A. Well, as I think I touched on before, ANSI
14 doesn't approve anything. I think where we are
15 going with this, I can say that there is nothing in
16 the ANSI standards that would disallow the use of a
17 foot control with a front gate.

18 Q. Looking at Switalski Exhibit No. 4,
19 and I am asking you to compare the Linemaster with
20 the anti-trip mechanism that's shown in exhibit --
21 is in Drawing No. 8 with the Linemaster Hercules
22 foot control that's in Exhibit No. 4.

23 A. All right.

24 Q. Can you look at those, please?

1 A. Four and eight?

2 Q. Correct.

3 A. All right.

4 Q. The paper -- one of the premises in the
5 paper I believe that you have indicated is as you
6 move from left to right in those photos, that the
7 riding the pedal becomes more prevalent?

8 A. Yes, that's how they are arranged.

9 Q. Okay. Would you explain to me why riding
10 the pedal is more prevalent in No. 8 as opposed to
11 No. 4? What feature makes reading the pedal more
12 prevalent?

13 A. It is ever so slightly more difficult to
14 put your foot all the way into Pedal No. 8 in order
15 to depress the -- or not depress -- but push the
16 toe latch before pressing down the pedal than it is
17 with the switch in Illustration No. 4 with no toe
18 latch.

19 Q. So it is based on incremental degrees of
20 difficulty in putting your foot in the pedal?

21 A. Yes.

22 Q. Is what leads to one riding the pedal?

23 A. Yes.

24 Q. And there would be a difference in the

1 likelihood of riding the pedal between
2 Photograph 1 -- I mean Drawing No. 1 and No. 3
3 that's referenced in Switalski Exhibit No. 4?

4 A. Yes.

5 Q. And that would be based on incremental
6 increases in difficulty in getting your foot in?

7 A. Yes. And that is borne out in the number
8 of activations, I think it is, in 60 seconds. The
9 more quickly one can actuate the pedal per unit
10 time, there is a direct correlation with how easy
11 it is to get your foot into and out of the pedal.
12 That Linemaster clipper switch in Illustration
13 No. 1 had the highest activation rates per unit
14 time.

15 Q. Am I correct that there are certain
16 situations where riding the pedal is not dangerous?

17 MR. ROBINSON: I will object to the form of the
18 question.

19 THE WITNESS: I think aerial work platforms
20 would be such an example where the pedal in effect
21 is used as an emergency -- not as an emergency stop
22 control but as a deadman control. The pedal has to
23 be remained depressed in order to enable all of the
24 other operator controls.

1 So, let's say, for example, the operator of an
2 aerial work platform has a heart attack while he is
3 in the basket of the control platform, his foot
4 will theoretically leave the pedal which in turn
5 will disable all of the other operating controls.
6 So it has to do with the application of the pedal.

7 In that situation it is used for deactivating
8 the controls or as with the press brake, it is used
9 to initiate the activation of the machine.

10 BY MR. HARTMAN:

11 Q. Would you agree that an analysis as to
12 what type of foot control should be placed on a
13 particular machine is a machine -- a
14 machine-by-machine analysis that needs to take
15 place?

16 MR. ROBINSON: I will object to the form of the
17 question.

18 THE WITNESS: Absolutely.

19 BY MR. HARTMAN:

20 Q. So but with regard to a press brake, you
21 would want to analyze press brakes as to determine
22 what type of foot control should be placed on it;
23 am I correct?

24 MR. ROBINSON: Objection to the form of the

1 question.

2 MR. HARTMAN: Will you do me a favor, though?
3 Will you let me finish my question before you
4 object? Because I am worried that when she is
5 transcribing it, it is not going to come out as a
6 clear question.

7 MR. ROBINSON: That was accidental on my part.
8 I thought you were finished. My apologies.

9 BY MR. HARTMAN:

10 Q. Am I correct that if you want to make a
11 determination as to the foot control used on a
12 press brake, it would be an analysis done with
13 regard to press brakes?

14 MR. ROBINSON: Objection to the form.

15 THE WITNESS: It certainly can be, and
16 I certainly agree it is best to do it on a
17 machine-by-machine basis.

18 BY MR. HARTMAN:

19 Q. Would it be a
20 type-of-machine-by-type-of-machine basis or a
21 machine-by-machine basis, meaning press brakes in
22 whole or would you take different models of press
23 brakes to do the analysis?

24 MR. ROBINSON: Object to the form.

1 THE WITNESS: Style of machine is good.
2 Individual press brakes are better. If the
3 manufacturer of the machine tool knows more detail
4 about the customer's application, then it is better
5 still.

6 BY MR. HARTMAN:

7 Q. With regard to providing a pedal as
8 standard equipment with a press brake, would you
9 agree it would be best to understand, make an
10 individual determination with regard to the
11 particular press brake?

12 MR. ROBINSON: Objection to the form.

13 THE WITNESS: Yes, generally the more
14 information the machine tool manufacturer has, the
15 better position they are in to select the best foot
16 control.

17 BY MR. HARTMAN:

18 Q. There would be a different analysis with
19 regard to a multi-purpose press brake than one
20 would have as opposed to a multi-purpose punch
21 press; am I correct?

22 MR. ROBINSON: Objection to the form.

23 THE WITNESS: Both machines being multi-purpose
24 in nature makes the distinction very difficult

1 because the machine tool manufacturer simply isn't
2 going to know enough about all the different
3 purposes that either form of machine are going to
4 be put to to select one type of foot switch over
5 another.

6 BY MR. HARTMAN:

7 Q. Well, if they are providing a foot switch
8 as standard equipment, wouldn't it be the
9 manufacturer's job to provide a foot switch that
10 provides the most protection for the highest number
11 of applications?

12 MR. ROBINSON: Let me object to the form of the
13 question. It is misleading. It also ignores his
14 last statement and his last answer to the question
15 where he explained to you why the distinction would
16 not be there that you want to be there.

17 MR. HARTMAN: I don't think he said that.
18 I think you are mischaracterizing his testimony.

19 MR. ROBINSON: You can suggest whatever you
20 want but the record is the record.

21 MR. HARTMAN: Right. I said I think
22 I understand and heard something different.

23 THE WITNESS: It is certainly desirable but
24 when we preface a machine as being multi-purpose,

1 it is virtually impossible for the machine tool
2 manufacturer to make a selection because the
3 ultimate use, the type, size, style of parts being
4 manufactured is simply not going to be known.

5 BY MR. HARTMAN:

6 Q. So am I correct that it is your testimony
7 today that it is impossible to make the selection
8 of the best foot control for -- the safest foot
9 control for a multi-purpose machine by the
10 manufacturer?

11 MR. ROBINSON: I will object to the form of the
12 question.

13 THE WITNESS: It is -- it is not impossible but
14 it is something the manufacturer is going to have
15 to do based on prior experience with similar
16 machines rather than anticipated future use of the
17 machine they are selling.

18 BY MR. HARTMAN:

19 Q. What does that mean?

20 A. Well, when you have a multi-purpose
21 machine --

22 Q. Let's talk about a multi-purpose press
23 brake.

24 A. Okay. What the machine tool manufacturer

1 is going to know is --

2 MR. ROBINSON: Hold on. I didn't make an
3 objection before. The implication that has just
4 been made by reference to the press brake suggests
5 that there is a distinction when the witness has
6 already indicated there wouldn't be a distinction
7 for multi-purpose power presses, mechanical power
8 presses versus mechanical press brakes. So the
9 question as phrased suggests that there is. And
10 the answer now being given only relates to press
11 brake. I think that is very misleading.

12 BY MR. HARTMAN:

13 Q. Sir, I think Mr. Robinson is suggesting
14 that you testify a particular way. My
15 understanding is that you said there would be
16 distinctions based on a machine-by-machine basis.
17 If you get down to the individual machines, there
18 would be a distinction with regard to types of
19 machine and then there would be a distinction --
20 meaning press brake versus punch presses, and then
21 there would be a further distinction with regard to
22 the types of uses the manufacturer knew. So there
23 are multiple distinctions in this decision-making
24 tree; is there not?

1 MR. ROBINSON: Hold on. Objection to the form.
2 You threw a lot of things in there that were not
3 stated. I think you indicated different uses of
4 the manufacturers as opposed to uses by the
5 end-user? Very misleading.

6 MR. HARTMAN: Would you read the question?

7 MR. ROBINSON: You trailed off some but
8 I thought I heard manufacturer. Would you read
9 that question back?

10 (Whereupon, the record was
11 read.)

12 MR. ROBINSON: Objection, compound, misstates
13 prior testimony and misleading.

14 BY MR. HARTMAN:

15 Q. Do you understand that question, sir?

16 A. I think so.

17 Q. Okay.

18 A. When the press brake manufacturer decides
19 to include a foot switch, what they have at their
20 disposal for making that decision is prior
21 experience with all the press brakes they have sold
22 in the past. And they make a selection of a foot
23 switch based on that prior experience because the
24 press brake is a multi-functional machine by its

1 nature and the press brake manufacturer rarely
2 knows anything about the future use of this new
3 machine they are building, they can only act based
4 on previous feedback from previous similar machines
5 they have built.

6 In this particular case I recall reading
7 some testimony from Heim that said our customers in
8 the past never complained about the foot control we
9 were using. There was no reason to change
10 something that was already working satisfactorily.
11 I think that's a very reasonable conclusion on the
12 part of Heim to draw with respect to continuing to
13 use the same foot switch product.

14 Q. But am I correct that when Heim is
15 supplying a foot pedal -- strike that.

16 Am I correct that when Heim is supplying
17 the foot control, it has to anticipate that that's
18 a multi-purpose on a multi-purpose press brake, it
19 has to anticipate the large body of uses to which
20 it is going to be utilized; am I correct?

21 MR. ROBINSON: Objection to the form.

22 THE WITNESS: They can't because that large
23 body is infinite in size.

24

1 BY MR. HARTMAN:

2 Q. Would you agree that it would be better to
3 do an analysis with regard to the foot control you
4 are going to place on a press brake by looking at
5 the uses to which press brake have been put to in
6 the past as opposed to evaluating punch presses in
7 the past?

8 MR. ROBINSON: Objection to the form.

9 THE WITNESS: Yes, I agree that would be
10 better.

11 BY MR. HARTMAN:

12 Q. So would you agree that it would be the
13 appropriate way for a manufacturer to go about it
14 is by analyzing press brakes used in the past?

15 A. Yes.

16 Q. And if you are designing a foot control
17 for punch presses, you look at punch press use in
18 the past?

19 A. Yes.

20 MR. ROBINSON: Objection to the form.

21 BY MR. HARTMAN:

22 Q. Am I correct?

23 A. Yes.

24 Q. At the time Heim manufactured the press

1 brake that was involved in Ms. Lindquist's
2 injuries, the ANSI standards that are cited in your
3 report that were adopted after 1978 were not ANSI
4 standards that Heim would have had in their
5 possession; am I correct?

6 A. Of course not.

7 Q. They wouldn't have had drafts of the
8 documents in their possession; am I correct?

9 MR. ROBINSON: Let me object to the speculative
10 nature of that type of question.

11 BY MR. HARTMAN:

12 Q. Well, sir, you have been on ANSI
13 committees; am I correct?

14 A. Yes.

15 Q. Okay. And I think the ANSI standard that
16 was proposed -- that was adopted as it relates to
17 press brakes after '73 was, 84?

18 A. '82.

19 Q. '82, I am sorry.

20 So would the '82 standard in the form that
21 it was adopted be something that Heim would have
22 had in its possession in '78?

23 MR. ROBINSON: Objection, asked and answered.

24 THE WITNESS: It is certainly possible that

1 there was an earlier draft and then only if Heim
2 had an in-house representative participating in the
3 committee.

4 BY MR. HARTMAN:

5 Q. So we have no way of knowing whether or
6 not the ANSI standard of 1982 was in Heim's
7 possession in '78?

8 A. I agree, we just don't have a way of
9 knowing.

10 Q. I am just trying to clarify things. Some
11 of these things to me are quite obvious but when
12 you get into the engineering realm, there is little
13 caveats and issues that --

14 MR. ROBINSON: Mr. Hartman, you began the
15 questioning by suggesting to him that they would
16 not have and now we have got the conclusion that of
17 course he would have know way of knowing that.

18 MR. HARTMAN: If he says he has no way of
19 knowing, that's fine. I probably should have asked
20 would you have any way of knowing to begin with.
21 If I knew all of the questions I was going to ask
22 before I came today, I would have some type of
23 better ones. So it is always good to armchair
24 quarterback like Mr. Robinson is doing to my

1 questions --

2 MR. ROBINSON: We don't need your snide
3 comments, Mr. Hartman. You just don't need to do
4 it.

5 MR. HARTMAN: That is not snide, Paul.

6 MR. ROBINSON: It is.

7 MR. HARTMAN: It is not. It is not meant to
8 be.

9 MR. ROBINSON: It is not necessary for the
10 deposition.

11 MR. HARTMAN: Paul, if you are taking offense,
12 I am sorry. It is not meant to be sarcastic.

13 MR. ROBINSON: There is just no need for that
14 in a discovery, in any deposition.

15 MR. HARTMAN: Paul, nothing is going on.

16 MR. ROBINSON: Please ask the next question.

17 MR. HARTMAN: We have been getting along well
18 all day. There is no issue here from my
19 perspective.

20 MR. ROBINSON: I understand.

21 BY MR. HARTMAN:

22 Q. Am I correct, sir, that OSHA governs
23 employer conduct?

24 A. Yes.

1 Q. OSHA does not govern manufacturer conduct,
2 manufacturer's conduct; am I correct?

3 A. Only as far as manufacturing operations
4 within a manufacturer's plant would go.

5 Q. So OSHA is not applicable to Heim in the
6 way it designs the press brake involved in this
7 case; am I correct?

8 MR. ROBINSON: Objection to the form of the
9 question.

10 THE WITNESS: Correct.

11 BY MR. HARTMAN:

12 Q. Do you understand what my question was,
13 sir?

14 A. I think so.

15 Q. Tell me what your understanding was of my
16 question so we can clarify the record.

17 MR. ROBINSON: Please don't get confused. When
18 I object to form, that doesn't mean that I don't
19 understand it or that he doesn't understand it.
20 I think it can be interpreted in various different
21 ways. Actually, there are a number of different
22 form objections, so don't assume that means that
23 I thought that he didn't understand it. I don't
24 want you to waste your time going through that.

1 I never suggested he doesn't understand it.

2 I couldn't possibly know what he understands but --

3 MR. HARTMAN: That's why I am asking him to
4 explain what he understands.

5 MR. ROBINSON: I didn't want you to be misled
6 in thinking that's the reason for that objection.
7 The reason for the objection was that it could be
8 read to suggest that it doesn't have any impact on
9 the legal issues involved with this case versus
10 whether or not under OSHA's regulations and
11 enforcement, whether they would try to have it
12 applicable to a manufacturer. That was the form
13 objection to the question.

14 MR. HARTMAN: I think that's a legal argument.
15 I understand it now. I didn't understand it
16 before.

17 BY MR. HARTMAN:

18 Q. Sir, would you agree as far as the
19 manufacturer and the manufacturer -- strike that.

20 With regard to Heim and its making the
21 press brake that was involved in Tina's accident,
22 Heim didn't have to follow OSHA standards with
23 regard to the manufacturing of that machine, did
24 it? I am not talking about the manufacturing

1 process. I am talking about designing and elements
2 to the machine.

3 A. And that's a distinction I was going to
4 make. With respect to Heim's design of the
5 machine, the OSHA regulations do not apply to them.

6 Q. Okay. So with regard to the Heim's design
7 of the press brake that injured Ms. Lindquist, the
8 OSHA regulations do not come into play?

9 MR. ROBINSON: Objection to the form,
10 specifically of the machine that injured Tina
11 Lindquist.

12 MR. HARTMAN: Let me re-ask that then.

13 BY MR. HARTMAN:

14 Q. With regard to the machine that's at issue
15 in this case, am I correct that OSHA has no input
16 as to how Heim designs that machine?

17 A. I don't believe so.

18 Q. Okay. And with regard to the selection of
19 the foot control OSHA has no input to Heim as to
20 what foot control it selects?

21 A. Again I think that's accurate.

22 MR. ROBINSON: Let me object to the form of
23 that question.

24 MR. HARTMAN: Would you tell me what your

1 problem is?

2 MR. ROBINSON: I don't possibly know if OSHA
3 had some involvement in some way with Heim or
4 someone else other than through a regulatory type
5 of enforcement but I don't know if there is any
6 evidence to suggest whether or not Heim would have
7 considered OSHA regulations if it did in fact have
8 some role somehow in this process and I don't think
9 Mr. Switalski would have any way of knowing that
10 either.

11 BY MR. HARTMAN:

12 Q. Well, with regard to your understanding of
13 the selection of the foot control, OSHA doesn't
14 govern Heim in selecting the foot control it is
15 going to include on the press brake; am I correct?

16 MR. ROBINSON: Objection, that has been asked
17 and answered. I think you have got that part out.

18 MR. HARTMAN: I don't think I do. I would like
19 to hear an answer.

20 MR. ROBINSON: It has been asked and answered
21 three times. Sure, you can ask it again. But he
22 has very clearly testified that OSHA's standards do
23 not govern how Heim would design its product.

24 Is that accurate, Mr. Switalski?

1 THE WITNESS: Yes.

2 BY MR. HARTMAN:

3 Q. Let me ask it.

4 A. Including the foot switch selection.

5 Q. So am I correct that OSHA does not govern
6 how Heim designs its products and the foot
7 selection process?

8 A. Yes, that's also my understanding.

9 Q. Thank you.

10 Would you agree that exceeding as it
11 relates to the foot controls, that if you exceed
12 the ANSI requirements of foot controls included
13 with the press brakes, that that's a good thing?

14 MR. ROBINSON: Objection to the form of the
15 question. Very broad, it doesn't have any
16 limitations.

17 BY MR. HARTMAN:

18 Q. You can answer.

19 A. I think any manufacturer is free to try
20 and exceed regulatory requirements when it is
21 possible to exceed them. The requirements simply
22 establish what is reasonably safe. There is no
23 prohibition against trying to do better.

24 Q. Would you agree that that's a good thing

1 to try to do better?

2 MR. ROBINSON: Objection to the form of the
3 question.

4 THE WITNESS: When it is possible to do better,
5 yes, certainly.

6 BY MR. HARTMAN:

7 Q. Are you -- other than those articles that
8 we referred to in 3 through 5, Exhibits 3 through
9 5, are you aware of any other publications that
10 discuss the causes of riding the pedal?

11 A. No, I think -- I think Barnett's
12 publications are the only publications that I have
13 ever come across that relate the presence of the
14 front gate to the misuse of riding the pedal.
15 I don't recall any other author writing about that
16 topic.

17 Q. So to the best of your knowledge Professor
18 Barnett is the only individual that has written
19 authoritative articles as to things that cause
20 riding the pedal?

21 MR. ROBINSON: Objection to the form of the
22 question.

23 THE WITNESS: Yeah, of the literature that
24 I personally have reviewed, I believe Barnett is

1 indeed the only one who has at least, as I said,
2 drawn a correlation between front gate and
3 encouragement to ride the pedal. That doesn't mean
4 there are no operators who ride the pedal and foot
5 controls that have no front gate. It is still a
6 misuse either way.

7

8 BY MR. HARTMAN:

9 Q. But your answer to me, sir, seems to be
10 limiting his article to the front gate as limiting
11 as being a means to cause to ride the pedal.
12 I believe your earlier testimony was the article
13 was written to show that ease of access was the
14 correlation to riding the pedal?

15 MR. ROBINSON: Let me object to the form of
16 that question. That is a misleading question.

17 BY MR. HARTMAN:

18 Q. Sir, is that a misleading question to you?

19 MR. ROBINSON: That's a different question,
20 first of all.

21 MR. HARTMAN: I am asking --

22 MR. ROBINSON: That's a different question.
23 I am not saying it is misleading to him.

24 MR. HARTMAN: Who is it misleading to?

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1 MR. ROBINSON: I am saying it is misleading
2 from a legal point of view.

3 MR. HARTMAN: How is it misleading?

4 MR. ROBINSON: I am going to state my
5 objection. You continuously ask this witness in
6 response to an objection if it is misleading to
7 him. That has no bearing on my objection, none
8 whatsoever.

9 MR. HARTMAN: Okay. Well, then --

10 THE WITNESS: I see the distinction you are
11 trying to make. There are many other factors that
12 can influence riding the pedal, the size of the
13 foot opening, whether or not there is a toe latch
14 behind the pedal, et cetera, et cetera. What I am
15 saying is that with regard to the next level of
16 attempt to make the foot control safer, which was
17 the addition of the front gate, Barnett in
18 particular to my knowledge is the only author that
19 has addressed that in such a way to draw a
20 correlation between the presence of the front gate
21 and an increase in riding the pedal.

22 BY MR. HARTMAN:

23 Q. And I understand what you are saying with
24 regard to that area but my question is broader than

1 that, sir. I am saying is there any literature out
2 there that you are aware of that indicates that the
3 ease of access, other than Professor Barnett, that
4 says that the ease of access to the pedal is a
5 factor that relates to riding the pedal?

6 A. I am not aware of any.

7 Q. Okay. So with -- because there are
8 multiple things and multiple devices in the foot
9 pedals that according Professor Barnett may or may
10 not influence riding the pedal; am I correct?

11 MR. ROBINSON: Objection to the form.

12 THE WITNESS: Yes, I mean there are -- there is
13 a ranking of 12 foot switches in his paper and
14 beginning with Foot Switch No. 2, there is some
15 feature of each foot pedal that somehow causes it
16 to be ranked in such a way that it progresses
17 towards that Allen Bradley switch, which was found
18 to be the most influential in terms of riding the
19 pedal.

20 BY MR. HARTMAN:

21 Q. Right. Am I correct that Professor
22 Barnett is the only author that you are aware of
23 that has studied the ease of access to the foot
24 pedal and its relationship on riding the pedal?

1 MR. ROBINSON: Let me object to the form of the
2 question.

3 THE WITNESS: To my knowledge, yes, he is.

4 BY MR. HARTMAN:

5 Q. And the conclusions drawn in Switalski
6 Exhibit No. 4 were based upon the speed with which
7 you can activate the pedal; am I correct?

8 MR. ROBINSON: Objection to the form. Your
9 question is limiting it or at least could be read
10 to be limiting it. Objection to the form.

11 BY MR. HARTMAN:

12 Q. Could you answer that question?

13 A. Certainly the actuation speed of each
14 style of foot pedal or foot switch is a major
15 influence but those -- the conclusions drawn were
16 also based on field experience in going to plants
17 and observing what actual press operators were
18 doing.

19 Q. Well, would you show me where it is
20 referred to field experience in Switalski Exhibit
21 No. 4 where Professor Barnett reaches his
22 conclusions?

23 MR. ROBINSON: Objection to the form. He
24 didn't say that the paper identifies that. He says

1 it was based on that. That's misleading.

2 THE WITNESS: May I see the other two papers
3 also?

4 (Discussion on the video record
5 but off the written record.)

6 BY MR. HARTMAN:

7 Q. Are you ready, Mr. Switalski?

8 A. Yes.

9 Q. Okay. What document are you referring to?

10 A. I am looking at Foot Controls: Riding the
11 Pedal. But I have a very clear recollection that
12 Barnett talked about field experience and foot
13 controls in one of his papers and unless I take
14 more time to look for it, I just can't find it
15 right now.

16 Q. Is it in any of the papers that are marked
17 as Exhibits 3 through 5?

18 A. Not that I am seeing at the moment but
19 that doesn't mean no.

20 Q. So for you to check on it, you will go out
21 and reread these articles to see if it is included
22 in those articles; am I correct?

23 A. Yes.

24 Q. You are not intending to go look at some